



State of Idaho

## DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

DIRK KEMPTHORNE  
GOVERNOR

KARL J. DREHER  
DIRECTOR

June 21, 2004

Melvin Marx Hintze  
4372 W. Houston Road  
Mackay, ID 83251

Re: Correspondence dated May 26, 2004

Dear Mr. <sup>Hintze</sup>Pehrson:

The Idaho Department of Water Resources (IDWR) received your letter on June 4, 2004 regarding mitigation for ground water use in Water District 34. Your letter does not propose an alternative mitigation plan.

As you stated, reduced aquifer recharge and low precipitation in recent years are the main contributors to the shortage of water in the Big Lost River basin. However, prior studies of the basin have concluded that diversion of ground water has also contributed to the shortage of water for senior surface water rights on the Big Lost River. While additional studies would result in a better understanding of ground water/surface water interactions in the Big Lost River basin, prior studies were determined to be adequate to establish the conjunctive administration requirements outlined in IDAPA 37.03.12.050, which states,

“All ground water rights shall be administered conjunctively as part of the Big Lost River and tributaries unless the ground water user can show to the satisfaction of the director, that due to well construction or location, the diversion of ground water from a particular point of diversion does not reduce the flow of the Big Lost River ....”

Idaho water law is based on prior appropriation doctrine, “first in time, first in right.” Conjunctive management of ground water and surface water requires that junior ground water users either be curtailed, or provide mitigation to senior surface water users in order to be allowed to continue out-of-priority diversion of junior ground water rights.

Because IDWR has determined that the above-referenced letter does not constitute an acceptable mitigation plan, you will be subject to any assessments made by Water District 34 to cover the costs of mitigation, assuming that Water District 34 submits an acceptable plan to IDWR. You will only be

subject to assessment if you are using ground water during the 2004 irrigation season. You have the option of reducing your assessment by reducing or ceasing your diversion of ground water during the remainder of the 2004 irrigation season.

Respectfully,

A handwritten signature in black ink, appearing to read "Tim Luke", written in a cursive style.

Tim Luke  
Water Distribution Section

cc: Robert Duke, Watermaster, Water District 34  
Seth Beal, Advisory Board Chairman, Water District 34  
Karl Dreher, Director, IDWR  
IDWR Eastern Region